



City of Seattle

Gregory J. Nickels, Mayor
Department of Planning and Development
D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 2307931
Applicant Name: Henry Lo for Milton McCrum
Address of Proposal: 166 Roy St.

PROPOSED ACTION

Master Use Permit for a change of use of an existing office use (2119 sq. ft.) to a mixed use development with medical service use on the ground level and one apartment above. One floor is proposed to be added to the top of the existing structure.

The following approval is required:

- **Variance** – To allow a mixed use in a structure not meeting the required floor to floor height per SMC 23.47.008-C2.

SEPA DETERMINATION: ☒ Exempt ☐ DNS ☐ MDNS ☐ EIS

☐ DNS with conditions

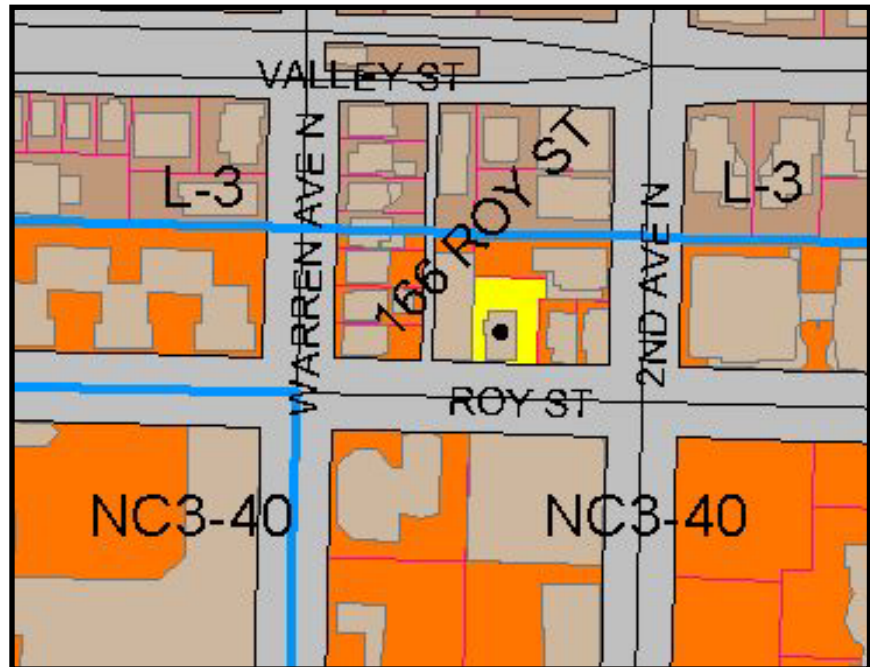
☐ DNS involving non-exempt grading or demolition
or involving another agency with jurisdiction

BACKGROUND DATA

Site and Vicinity Description

The property is a rectangular shaped interior lot 5,080sq. ft. in size. The site is zoned Neighborhood Commercial Three (NC3-40), with a 40 ft. height limit. The existing development on the site is a two-story brick and stucco building, with a gravel parking area located at the rear of the site. Currently both existing floors in the building are used as an office.

The building has vehicle and pedestrian access from Roy St. as there is no alley abutting the site.



Immediately north of the subject site are two multifamily apartment structures and northeasterly there is an office building. Located adjacent to the proposal on the southwest portion of the subject block are a mixed use structure building, a retail structure and an office building. Further west is Warren Ave., which has several residences (multifamily and single family) which face the street. There is an alley that bisects the block and provides access to both the dwellings off of Warren Ave as well as two buildings north of the proposal mentioned above. The alley does not abut the subject site. Surrounding zoning in the area consists of Lowrise Three (L3) and Neighborhood Commercial Three (NC3-40).

Proposal

This proposal is to change the use of 997 sq. ft. of office space on the ground floor to a Medical Service Use and change the use of 1,122 sq. ft. on the second floor to a multifamily use (apartment). The proposal also includes a one story addition to the structure which will establish use as multifamily (apartment).

The proposal would maintain the existing structure and footprint. However, there will be some interior and exterior alterations/improvements to the first and second floors. The 1st and 2nd floors are proposed to have significant floor plan changes mainly to partition walls; also the 2nd floor is proposed to have a new stair which will provide access between the 2nd and 3rd floors

(apartment) of the structure. The open space will be provided in the form of a roof deck on the 3rd floor, with a hot tub which will face the street. One parking space is proposed at the rear of the site.

Public Comment

DPD received no public comment letters during the comment period, which ended on December 17th, 2003.

ANALYSIS-VARIANCE

Variances from the provisions or requirements of this Land Use Code shall be authorized when all the facts and conditions listed below are found to exist:

1. ***Because of unusual conditions applicable to the subject property, including size, shape, topography, location or surroundings, which were not created by the owner or applicant, the strict application of this Land Use Code would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity;***

The unusual condition associated with the subject property is that the existing structure was built and has existed on the subject property prior to the adoption of the current zoning code and specifically the development standards for mixed use development (SMC 23.47.008). Since the building was originally constructed in 1946, the owner could not have known about the future requirements for mixed use development, specifically the 13' foot first floor height requirement.

The existing structure is conforming to commercial requirements, but because the existing ceiling height is 10', the change of use from commercial to mixed use development creates non-conformity with regard to the required first floor 13' floor-to-floor height requirement of SMC 23.47.008-C2. The applicant is proposing to maintain the existing first floor height of 10'. The proposal includes a one-story multifamily addition. Mixed use development consists of residential and non-residential use in the same structure or in separate structures on the same lot and meeting the standards specified in SMC 23.47.008. Since the 13' floor-to-floor requirement on the 1st floor cannot be met if the existing second floor is maintained, the strict application of the Land Use Code would deprive the property rights and privileges enjoyed by others. The original plan and structure was of mixed use intent as it had residential above commercial, but when the use of the 2nd floor was changed in 1986 from multifamily (apartment) to office, the entire structure was permitted as commercial and conforming to the current Land Use Code. If the use was not changed in 1986 the structure would be considered a mixed use development non-conforming to the 13' first floor height requirement. It shall be noted that the Department would grant variances to structures in the same vicinity or zone that had the same issue, depending on the specifics of the request and situation. It would cause an undue hardship on the applicants to raise the existing first floor to 13' in order to change the use.

2. ***The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located;***

Approving the proposed variance would not constitute a grant of special privilege and would not go beyond the minimum necessary to afford relief. The applicant is asking for a waiver on the 13' height requirement for mixed use development as the 1st and 2nd floor are existing and to remain. The granting of the variance is not a grant of special privilege, other neighboring properties that have the same code compliance issue with adding residential to an existing commercial structure would be granted the same accord, depending on the specifics of the proposal. In this case, the request for the variance is the minimum necessary as the 10' first floor height exists and the relief from the 13' requirement is all that is required for the development to go forward. All other mixed development standards of SMC 23.47.008 will be met, so the intent of mixed use development is met by the proposal.

3. ***The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located;***

The granting of these variances would not be materially detrimental to the public welfare, because the proposed change of use will not compromise the viability of commercial uses along Roy St, or the vicinity. Furthermore, it will not adversely affect bulk and scale, shadows, traffic, parking, noise and view impacts beyond what could be constructed if the structure were to meet the current requirement of first floor height of 13'. The foot print of the existing structure will not be increased and the height proposed by the current application is approximately 32'-1" at its highest point, where 40' is allowed. One parking place is proposed for the residential use. Also, the storefront is proposed to be refinished with new ground level windows, a re-graded walkway adjacent to the sidewalk, new brick exterior finish, planters and painted sheet metal and stucco. There is no change to the existing curb cuts which are 15' and 10' in length. As a result, this variance if approved will not be materially detrimental to the public welfare or injurious to the property or improvements in the subject Neighborhood Commercial Zone.

4. ***The literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code would cause undue and unnecessary hardship;***

The existing structure was built prior to the adoption of current development standards. The mixed-use development standards in commercial zones were designed for new development to be usable as non-residential uses and to be pedestrian friendly. The literal interpretation and strict application of the applicable provisions or requirements of the Code would require the applicant to perform major structural alterations and remodeling of the first floor ceiling to achieve the code required 13' first floor ceiling height. Meeting code development standard for the proposed mixed use development would be impractical due to the existing 10' first floor to ceiling height. If the variance were not granted, the proposal would require the reconstruction of the 1st floor ceiling and possibly the entire 2nd floor.

Therefore, denial of the requested variance would cause undue and unnecessary hardship because the existing structure and Land Use Code would not allow a change to a mixed-use structure without variance approval or, alternatively it would require major alterations to the existing structure. The proposal would allow the applicant to change the use of the existing structure to development that is compatible with the neighborhood commercial zoning of the property and compatible to surrounding uses in which the structure is located. Given the nature of the existing structure and the proposal by the proponent, it would cause undue and unnecessary hardship to reconstruct or raise the second floor to the required 13' first floor height.

5. *The requested variance would be consistent with the spirit and purpose of the Land Use Code and adopted Land Use regulations for the area.*

The Neighborhood Commercial development standards seek to ensure that the scale of uses is compatible with the character and function of the commercial area. The requested variance in this instance would not detract from the character of the surrounding commercial community. Granting the variance would not be contrary to the spirit and purpose of the Land Use Code regulations.

DECISION - VARIANCE

Variance – To allow a mixed use in a structure not meeting the required floor to floor height per SMC 23.47.008-C2 - **GRANTED.**

CONDITIONS - VARIANCE

None.

Signature: _____ (signature on file) Date: March 4, 2004
Lucas DeHerrera, Land Use Planner
Department of Planning and Development

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